

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

DONOVAN DEVOST,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

---

**DECISION AND ORDER**

16-CV-119-A

13-CR-173-A

The petitioner, Donovan Devost, moves pursuant to 28 U.S.C. § 2255 to re-open a sentence on the ground that the Court assessed two Criminal History points under United States Sentencing Guidelines § 4A1.1(d) based upon an invalid prior state court sentence that has since been corrected by the state court. Petitioner Devost maintains that, in light of his corrected criminal record, he must be resentenced based upon a Criminal History Category IV, instead of the Criminal History Category V that applied when he was originally sentenced, with a corresponding reduction of the advisory range of imprisonment to a range of 77 to 96 months from the original range of 92 to 115 months. The United States agrees Petitioner should be resentenced in light of his corrected criminal record.

After due consideration of the record, the motion of petitioner Donovan Devost to re-open his sentence based upon his corrected criminal record and pursuant to 28 U.S.C. § 2255 and *Johnson v. United States*, 544 U.S. 295, 304 (2005) (discussing *Daniels v. United States*, 532 U.S. 374, 382 (2001)), is granted.

Petitioner and defendant Devost shall be produced for resentencing on March 20, 2017 at 1:00 p.m. A revised Presentence Investigation Report is due by February 8, 2017. The parties' Statements with Respect to Sentencing Factors, objections and motions are due by February 27, 2017; responses to objections and motions are due by March 6, 2017; character letters and a sentencing memorandum in support of the defendant are due by March 6, 2017; motions to adjourn the resentencing are due by March 10, 2017; a final revised Presentence Investigation Report is due by March 13, 2017; and a response to the defendant's sentencing memorandum is due March 13, 2017.

**IT IS SO ORDERED.**

*Richard J. Arcara*

HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: January 17, 2017